

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JASON E. MAXWELL,

Plaintiff,

v.

STATE OF OKLAHOMA, et al.,

Defendants.

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No. CIV 18-069-RAW-SPS

OPINION AND ORDER

Plaintiff, a pro se pretrial detainee who is incarcerated in the Okmulgee County Jail in Okmulgee, Oklahoma, filed this civil rights complaint under the authority of 42 U.S.C. § 1983. He alleges he has been denied his constitutional rights of due process, equal protection, and a speedy trial.¹ He seeks relief in the form of dismissal of his pending charges and his release from custody (Dkt. 1 at 5). The requested relief, however, is not available in this action.

“[A] prisoner who challenges the fact or duration of his confinement . . . must do so through an application for habeas corpus.” *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012) (citing *McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 812 (10th Cir. 1997)). A state pretrial detainee may bring a habeas action in federal court to “demand enforcement of the [State’s] affirmative constitutional obligation to bring him promptly to trial.” *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 490 (1973) (citation omitted). He, however, may not seek habeas relief to forestall state prosecution altogether. *See id.* at 490-91; *Capps v. Sullivan*, 13 F.3d 350, 354 (10th Cir. 1993) (holding that pretrial habeas petition can only seek to force the state to go to trial). Therefore, if Plaintiff wants to pursue

¹ Plaintiff does not state which of his criminal cases he is challenging.

his claim regarding a speedy trial, he must file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, after exhausting available state court remedies. *See Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000).

ACCORDINGLY, this action is, in all respects, **DISMISSED WITHOUT PREJUDICE**, and Plaintiff's motion for leave to proceed *in forma pauperis* is **DENIED AS MOOT**.

IT IS SO ORDERED this 8th day of May 2018.

Dated this 8th day of May, 2018.

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink.

Ronald A. White
United States District Judge
Eastern District of Oklahoma